



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Roy A. Jones
County Attorney
Cottle County
Paducah, Texas

Dear Sir:

Opinion No. C-4913

Re: Can a county judge place the name of a candidate for a State office on the official ballot for the general election to be held November 3, 1942, if the candidate is in the United States Armed Forces and has not filed an affidavit of loyalty with the Secretary of State as required by Art. 2978a?

Your request for an opinion on the above matter has been received and carefully considered. We quote from your request as follows:

"Paul Lubanks of Katador, Motley County, Texas, won the Democratic nomination for State Representative of this district in our Democratic Primaries this past summer. At the present time he is a member of our United States Armed forces and he has not sent in an affidavit of loyalty as required under Article 2978 a, Acts of the 47th Legislature, 1941, to the Secretary of State and his name has not been certified by the Secretary of State to go on the official ballot for Cottle county, Texas.

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"I should therefore greatly appreciate your answer to this question;

"Can a County Judge place the name of a candidate for a State office on the official ballot for the General election to be held November 3, 1942, if the candidate is in the United States Armed forces and has not filed an affidavit of loyalty with the Secretary of State as required by Article 2978 a, Acts of the 47th Legislature, 1941?"

Section 1 of Article 2978a, reads as follows:

"Section 1. No person shall be permitted to have his name appear upon said official ballot as a candidate for any office in this State unless and until he shall file with the Secretary of State his affidavit, in a form to be prescribed by the Attorney General, that if elected to the office which he seeks, he will support and defend the Constitution and Laws of the United States and of Texas. Said affidavit shall further recite that such candidate believes in, approves of and if elected will support and defend our present representative form of government, and will resist any effort or movement from any source which seeks to subvert or destroy the same or any part thereof. Use of the masculine term herein shall be construed to include the feminine."

This statute is plain and unambiguous and, while it has not been passed upon by our Courts, it is the opinion of this department that same is binding and must be complied with in order for a candidate to have his name upon the official ballot. Therefore, we answer your inquiry in the negative and hold that a county judge cannot place the name of a candidate for a State office on the official ballot for the General election to be held November 3, 1942, under the facts stated by you.

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Trusting that this satisfactorily answers your inquiry, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

APPROVED OCT 14, 1942

BY
FIRST ASSISTANT
ATTORNEY GENERAL

Jas. W. Bassett
Assistant

JWB:ff

